No. 11705.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM I. HEFFRON, Trustee of the Etate of Quartz Crystal Products Co., a limited partnership composed of Raymond I. Biggy, John W. Buol and James F. Collins, Bankrupt,

Appellant,

vs.

U. S. MACHINERY COMPANY,

Appellee.

APPELLEE'S BRIEF.

CHARLES A. THOMASSET,
319 Story Building, Los Angeles 14,
Attorney for Appellee.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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Statement of Facts.

The pertinent facts involved are as follows:

By an instrument dated November 10, 1944, appellee, as lessor, and the bankrupt, as lessee, entered into a lease contract [Tr. p. 61] under the terms of which appellee leased the following machinery to the bankrupt:

1—60 Caterpillar Tractor No. PA 3361, with 10-foot dozer blade.

The lease provided for a total rental of $2,500.00 and $62.50 sales tax, of which amount $818.75 was payable forthwith and the balance of $1,743.75 in nine monthly installments of $193.75 each, plus interest.

By another instrument in writing also dated November 10, 1944, appellee as lessor, and the bankrupt as lessee, entered into a second lease agreement [Tr. p. 66] covering the following machinery and equipment:

1—Trommel, complete as inspected, including trunions, chains, sprocket and thrust roller;

1—100-foot conveyor, 24″, complete with belt;

1—Byron Jackson Pump and motor;

1—3-tooth Rooter.

The lease provided for a total rental of $3,645.00 plus sales tax of $91.12, payable $1,245.32 forthwith, and the balance of $2,490.80 in ten monthly installments of $249.08 each, plus interest.

Both of the above mentioned leases provided further:

> "The intent of this lease agreement is that the Lessor leases certain machinery, as herein specified, to the Lessee; and that this lease shall not be construed as a sale.
>
> It is understood and agreed that the machinery shall at all times, be and remain personal property, not withstanding the manner of its annexation to realty; and that title to said property shall remain in said Lessor until all of the payments herein provided for are made and all of the conditions and terms hereof fully complied with by said Lessee, whereupon should said Lessee so elect, the said Lessor shall make, execute and deliver to said Lessee a bill-of-sale of said property, and sell to said Lessee the said property for the sum of One Dollar ($1.00)." [Tr. pp. 62, 67.]

The leases also provided *inter alia* for repossession by lessor in the event of default by lessee [Tr. pp. 63, 68], and also as follows:

> "All previous communications between the parties hereto, either oral or written, with reference to said machinery or this lease, are hereby superseded and no modification hereof shall be binding upon the parties or either of them unless such modification shall be in writing duly accepted and approved by both parties. There are no representations, understandings or agreements outside of this lease." [Tr. pp. 63, 68.]

Clyde E. Henry, president of appellee, testified that the main part of the property covered by these lease contracts was not delivered until after December 25th. [Tr. pp. 158-159, 165]; that the Federal regulations on installment contracts required payment of one-third upon execution, and that the balance due on the said down payment was not received until December 10th. [Tr. pp. 175, 176]; that the bankrupt made five installment payments on each contract, the last payment on each being received on April 25, 1945 [Tr. pp. 142, 143]; that the witness received a telegram from Mr. Biggy dated December 31st [Trustee's Ex. 9; Tr. p. 102], advising the witness that Mr. Biggy would call upon him the following Saturday; that Mr. Biggy did not appear on said Saturday; that part of the machinery covered by the leases was sold to Mr. De Michelis on the 7th of January, and that when Mr. Biggy did appear, he did not offer any payment but told the witness that the bankrupt was still trying to finance the project. [Tr. pp. 154, 157.] Prior to the

receipt of the telegram, the bankrupt had been notified that repossession was necessary. [Tr. pp. 73, 74.] This letter was received by the bankrupt who replied by letter dated December 13, 1945. [Tr. p. 74.]

With reference to the sale to Mr. De Michelis, Mr. Henry testified that the sale was contingent upon the ability of the appellee to make delivery [Tr. p. 147]; that when Mr. Biggy finally did appear, after the sale had been made to Mr. De Michelis, Mr. Henry stated to Mr. Biggy that if it were at all possible for Mr. Biggy to get his finances, that he could probably deal with Mr. De Michelis and carry on his operations; that the witness had requested Mr. De Michelis not to remove the equipment immediately and that Mr. Henry thought Mr. De Michelis might take $4,750.00 to leave the whole equipment there and get his equipment somewhere else. [Tr. p. 174.]

With reference to the negotiations that preceded the execution of the leases Mr. Henry testified that originally the parties discussed payment of part of the equipment in cash but later the entire deal was changed until finally they agreed on the lease contract. [Tr. p. 159.]

With reference to the exection of the lease agreements the record discloses the following:

1. The leases themselves show, by notarial acknowledgments, that the bankrupt acknowledged each one on the 14th day of November, 1944 [Tr. pp. 65, 70], and that the appellee acknowledged them on the 12th of December. [Tr. pp. 64, 69.]

2. The testimony of Clyde Henry, president of appellee, that he signed and acknowledged each of the lease contracts on the 12th day of December, 1944. [Tr. pp. 107-113, 154, 179-182.]

3. The testimony of Harry Satterfield to the effect that Mr. Henry executed each lease agreement in his presence. [Tr. pp. 113-117, 186-189.]

4. A stipulation entered into between counsel that it shall be deemed the notary, before whom appellee executed the lease contract, had been called and testified that each of the said leases was signed before him on the 12th day of December, 1944, by appellee. [Tr. pp. 189-190.]

5. The admission of the bankrupt that the latter signed and acknowledged the leases on November 14, 1944.

Appellant refers to appellee's petition for reclamation and claims appellee has admitted, therein, that the conditional leases were made and entered into on November 10, 1944. What the petition in fact alleges is that "on or about the 10th day of November, 1944," appellee and the bankrupt entered into the agreement of leases involved herein. [Tr. pp. 14, 15.]

Appellant also claims that the claim and delivery complaint filed against the bankrupt admits that the lease agreements were made and entered into on November 10, 1944. What the complaint alleges, however, is quite something else. The allegation is that "that on or about said date," the lease agreements were entered into. [Tr. p. 80, par. IV.]

POINT I.

The Only Contracts Before the Court Are the Written Leases.

It is a little difficult to determine just what appellant is trying to establish by asserting that there were oral contracts between the parties involving the machinery covered by the leases. It is obvious from the foregoing recital of the facts that the parties negotiated prior to the execution of the written leases, and that these negotiations were consummated by the execution of the leases. The latter provides that all previous communications between the parties, either oral or written, with reference to the machinery or to the leases, are superseded thereby. The prior negotiations therefore, never amounted to a completed transaction except as is evidenced by the leases, and that is the uncontradicted testimony of Mr. Henry for the appellee. [Tr. p. 159.]

It is submitted that there is no evidence to support any finding of an oral agreement of sale other than evidence of the usual and customary negotiations which lead to a sale in countless transactions. Moreover, appellant does not rely on an oral agreement in any discussion of the law and appellee therefore assumes that the reference to oral agreement is incidental.

POINT II.

There Is No Admission Herein by Appellee That the Leases Were Executed on November 10, 1944.

Similarly, the assertion by appellant that appellee admitted that the contracts involved were executed on November 10, 1944, is not insisted upon by appellant in its discussion of the law and is apparently abandoned. The answer, of course, is that there is no such admission as reference to the petition for reclamation filed by appellee and to the complaint in claim and delivery will show. In each one the date the leases were entered into is alleged as "on or about" November 10th.

Appellant, moreover, admits that the agreements were not signed by the bankrupt until November 14th, or four days after the date which appears on the agreements. There is no evidence of any sort that the agreements, although dated November 10th, were signed by either of the parties involved on that day, and the evidence on the issue of execution was addressed to the ascertaining of the true date.

POINT III.

The Agreements Were Recorded Within the Time Prescribed by Section 2980, Civil Code of California, and Are Therefore Binding Upon and Valid as to the Trustee and Creditors of the Bankrupt.

A. As to Execution:

Appellant is basing its appeal on the ground that execution by the bankrupt, without the signature of the seller, established the beginning of the 20 day period within which the leases had to be recorded under the provisions of Section 2980 of the Civil Code of the State of California.

This contention has been met and discussed by the Honorable District Court, and the opinion thereof, together with the citations of law therein contained, are hereby referred to and adopted by appellee. [Tr. pp. 123 *et seq.*] That opinion is set forth as an appendix hereto.

This point was also discussed by appellee in its points and authorities on petition for review, and reference is hereby made thereto and said points and authorities are hereby adopted by appellee. [Tr. pp. 107 *et seq.*]

It is admitted that each of the agreements was recorded on December 18, 1944. [Tr. pp. 53-54.]

Appellant claims that the agreements should be deemed to have been executed, within the meaning of Section 2980 of the Civil Code, on or about November 18, 1944. (App. Op. Br. p. 19, last par.) But why November 18th? Appellant admits that the agreements were not signed by the bankrupt until November 14th, and the uncontradicted evidence is that appellee did not sign and acknowledge the agreements prior to December 10th, 1944.

Accordingly, if the construction of the statute asserted by appellant is adopted, a conditional vendee may come into court, testify that he signed an agreement not signed by the conditional vendor on a particular date, and then mailed it to the conditional vendor, and such evidence will establish the beginning of the 20 day period within which the contract must be recorded under Section 2980 of the Civil Code. Not only that but, according to the appellant, all that the court need do under such circumstances is to estimate the number of days a letter in ordinary course would require to reach the conditional vendor, and then select that day as the date of execution by both parties—without anything else. For that is exactly what appellant contends and asserts.

Appellant is seeking reversal of the Honorable District Court on the ground that the contracts were not recorded within 20 days after their execution *by the vendee.* The section, however, does not say "within 20 days after signing by one of the parties," but *within 20 days after execution of the agreement.*

It has been repeatedly held, as the opinion of the Honorable District Court shows, that execution of a bilateral instrument, involves signing by both parties, and delivery. According to the evidence, which is uncontradicted, appellee, after signing the contracts on the 10th day of December, 1944, and acknowledging them at the same time, returned a copy of each to the bankrupt. So there was no delivery to the bankrupt of the contracts involved until sometime after December 10, 1944. The contracts were

recorded on December 18th. According to appellant signing by the conditional vendor and delivery of the contracts is not within the purview of the term "execution" as that word is used in Section 2980 of the Civil Code. Appellant, however, can cite no cases to that effect.

B. As to Estoppel:

Appellant claims that appellee is estopped from denying execution as of November 18, 1944. There is no finding of fact or conclusion of law asserting an estoppel and the Referee's order does not purport to be based upon an estoppel. Nor, is it submitted, is there any evidence upon which a claim of estoppel can be based.

There is a finding to the effect that the bankrupt had creditors who had no actual knowledge of the said contracts and who became creditors of the same bankrupt while the said property was in the possession of the bankrupt and before the contracts were recorded. [Tr. p. 55.] Is that the basis upon which the claim of estoppel is predicated? The record is not clear on the subject, but if appellant is making such a claim then appellee desires to point out that the finding is a conclusion. Moreover, Section 2980 of the Civil Code does not provide that a conditional sales contract is invalid if not recorded within 20 days after the conditional vendee acquires possession of the property involved; and, if it did, then the evidence is to the effect that the property covered by the agreement involved herein was not completely delivered until approximately December 25, 1944. What the code section provides, and it is a technical point now which ap-

pellant attempts to invoke, is that the contracts are void as to creditors if the contract is not recorded within 20 days after its execution.

Section 2980 of the Civil Code does not provide an estoppel as to creditors who become such during the period of 20 days between execution of the contract and its recordation. If the contract is recorded within the period of 20 days then the contract is valid against the creditors who become such during that period, even though they have no knowledge of the contract and the property is in the possession of the conditional vendee. There is nothing in the code section which provides that the contract is invalid if the property covered by the conditional contract is delivered prior to recordation. All that the section provides is that the contract must be recorded within 20 days after its execution, otherwise it is void as against the creditors who become such without knowledge of the contract while the property is in possession of the buyer. The finding of fact therefore with reference to the existence of creditors is not only a conclusion but is without meaning, for the existence of creditors, prior to recordation of the contracts, and while the property is in the possession of the buyer, is of no avail to them if recordation is made within 20 days after execution; hence the existence of creditors and possession by the vendee *ipso facto* creates no estoppel.

POINT IV.

There Is Nothing Due the Bankrupt Estate.

Appellant argues that the contracts being invalid because they were not recorded within 20 days after execution, and appellee having sold a portion of the property for a sum greater than the balance due on the contract, which sale by the way occurred prior to the filing of a petition in bankruptcy, the trustee can affirm the sale and claim the difference between the amount due and the amount of the sale. That, of course, assumes that the contracts are invalid under Section 2980 of the Civil Code. Which brings us back again to the interpretation of the word "execution" and what constitutes execution of the contracts. Determination, therefore, of the question of validity of the contracts by reason of recordation or non-recordation under the provisions of Section 2980 of the Civil Code determines the right of the trustee to affirm the sale to Mr. De Michelis and claim the difference between the amount for which the property was sold and the balance due under the contracts.

It is submitted that the order of the Honorable District Court should be affirmed.

Respectfully submitted,

CHARLES A. THOMASSET,
Attorney for Appellee.

APPENDIX.

[Title of District Court and Cause]

Opinion

Appearances:

Charles A. Thomasett, Esq., Attorney for U. S. Machinery Co., Los Angeles, California.

George T. Goggin, Esq., Attorney for Trustee, Los Angeles, California.

Yankwich, District Judge:

On January 28, 1947, the Referee made an Order in the above matter upon the petition in reclamation of the U. S. Machinery Company in which the petitioner sought possession of certain machinery and equipment in the possession of the Trustee. The Order determined that the personal property was an asset of the bankrupt estate, that the petitioner was not entitled to its possession, and that it owed to the Trustee the amount of $1331.85. The basis for the Order was that two agreements in writing entered into by the U. S. Machinery Company and the bankrupt dated November 10, 1944, and not recorded until December 18, 1944, were invalid under Section 2980 of the Civil Code of the State of California. This is a petition to review the Order.

The Referee in his certificate on review admits that the petitioner has correctly set forth his ground for review in this language:

> "That petitioner alleges that each of said agreements was executed on December 12, 1944, and recorded on December 18, 1944, and is valid as to the

Trustee herein and the creditors of this estate and that the said order, and the whole thereof, is erroneous and that the Honorable Referee herein erred in refusing to grant the relief prayed for in said petition for reclamation of this petitioner."

A study of the memorandum opinion which the Referee filed convinces me he arrived at the wrong conclusion, because he misinterpreted the meaning of the phrase "its execution" in Section 2980 of the Civil Code of California, the material portion of which reads:

"Every conditional sales contract, lease, and bailment or feeder agreement covering live stock and other animate chattels and every conditional sales contract of equipment and machinery used or to be used for mining purposes, must be acknowledged, or proved and certified, and must be recorded within twenty (20) days after its execution in the office of the recorder of the county where the buyer, the party feeding, the lessee or the bailee, respectively, resides at the time he executes such contract, lease, feeder or bailment agreement or in case the buyer, the party feeding, the lessee or the bailee is a nonresident of this state, in the office of the recorder of the county or counties where the property involved is located at the time the contract, lease, feeder or bailment agreement is executed by the buyer, lessee, or bailee or feeder, and a contract of conditional sale of equipment and machinery used or to be used for mining purposes shall also be recorded in every case in the county where the property is situated otherwise, it shall be void as to the lien or

interest of the seller, the lessor, bailor or owner against bona fide purchasers, encumbrances and those having no actual knowledge of the contract, lease, feeder or bailment agreement who become creditors of the buyer, the party feeding, the lessee or the bailee, while said property is in the possession of any of the last mentioned parties." (Emphasis added.

The Referee is not so much to blame because other California statutes, to be referred to, and bearing on the subject, and many of the cases to be cited herein were not called to his attention.

And here I must call attention to a fault which is apparent in many of these reviews, i. e., that counsel, who specialize in bankruptcy, especially those who appear for Trustees seem to rely too much on general "equitable bankruptcy principles" contained in Collier and Remington, and pay too little attention to the fact that contractual rights in bankruptcy are determined by the laws of California and the decisions interpreting them. Some time ago, I had before me a review in which the Referee had determined that the Trustee had certain rights to an automobile because the bankrupt, being indebted to a bank on several obligations, made certain payments which were not applied to the automobile indebtedness. To my surprise, I discovered that, at no time, had the Referee's attention been called to a section of the Civil Code of California (Section 1479) which permitted the bank to so apply the money.

In another matter, the point upon which the review turned was the effect and manner of service of process on

a dissolved corporation. That, too, depended on California statutes to which the Referee's attention was not called by either side. (California Code of Civil Procedure, 411(6)(a), Civil Code, Sec. 402(a).)

In the case before us, the Referee was induced to disregard binding California law entirely. His memorandum opinion fully demonstrates this. For, while indicating why he disbelieved uncontradicted testimony as to the date of the execution of the instrument,—including (I assume) the stipulated testimony that the notary who took the signature of the officer of the U. S. Machinery Company would testify that the instrument was signed and acknowledged before him on December 12, 1944,—he proceeds to determine that the lease-contract violates Section 2980 of the Civil Code of California without referring to any cases interpreting the section or defining execution and ignoring, as will appear later, even those which were cited to him in the briefs. He bases his decision on his inferences from facts. As to the law, he contents himself with a reference to the rather nebulous "equity powers of the bankruptcy court" (Memorandum Opinion, page 6, line 24). Cases depending on statutory interpretation cannot be determined by general references to bankruptcy powers.

And now to the problem before us.

I advert to the fact that this is another of those cases in which the "security" was not one given to an outsider, but was given for a part of the purchase price. Consequently, the approach to the problem is that laid down by myself in re Mercury Engineering Company, Inc., 1946, D. C. Cal., 68 Fed. Supp. 376, which was re-

cently sanctioned by the Circuit Court of Appeals for the Ninth Circuit in Citizens National Trust & Savings Bank v. Gardiner, decided on April 28, 1947, and not yet officially reported.

It may well be that the object of this section, as I stated some years ago, in re Great Western Petroleum Corp., 1936, D. C. Cal., 17 Fed. Supp. 247, 250, is to protect creditors against claims to property in possession of a bankrupt on the basis of which the creditors may have extended credit. But the fact here is, as in the Mercury Engineering Company case, supra, that the persons who claimed rights under the lease or conditional sales contract were the very persons who furnished the machinery which was paid for. And so we come to the main question.

The Referee took the view that, because one party to this lease contract or the conditional sales contract,—the bankrupt—had signed and executed the instrument, this was "an execution" of the instrument within the meaning of the section. This interpretation disregards entirely the law of California. We do not need to speculate as to what "execution" means because Section 1933 of the Code of Civil Procedure, which has been in effect since 1872, tells us:

> "The execution of an instrument is the subscribing and delivering it, with or without affixing a seal." (California Code of Civil Procedure, Sec. 1933.)

The Courts of California and the Circuit Court of Appeals for the Ninth Circuit have held that this section means exactly what it says, i. e., it means subscribing not by one party, but by all the parties who are required

to sign it and delivering it to the party for whose benefit it is made, or delivering it for record so as to make it notice to the world. In the case of a lease contract or contract of sale of personal property, delivery means delivery of the instrument, the lease contract, to the lessee after it has been signed by both the lessor and lessee, whether it is to be recorded or not. And when an instrument which, on its face, shows that it was intended to be signed by several parties, is signed by one only of the parties to be bound, and is in the possession of others who are also supposed to sign it, there is no "execution" within the meaning of California law until all the parties have executed it and delivered it to the others or recorded it. (See, McCarthy Co. v. Commissioner of Internal Revenue, 1935, 9 Cir., 80 F. (2d) 618 and California cases cited at page 620.) This is also the general rule. (See, 33 C. J. S., Executions, page 120.)

In 17 C. J. S., Contracts, Section 62(a), pages 411-412, it is said:

> "It is held in numerous cases that, where an instrument has been executed by only a portion of the parties between whom it purports to be made, it is not binding on those who have executed it. The cases so holding are usually those in which the parties executing the instrument would have a remedy by way of indemnity or contribution against the other parties named, which remedy is lost by the failure of such other parties to execute the instrument. The question as to whether those who have signed are bound is generally to be determined by

> the intention and understanding of the parties at the time of the execution of the instrument. The reason for holding the instrument void is that it was intended that all the parties should execute it and that each executes it on the implied condition that it is to be executed by the others, and, therefore, that until executed by all, it is inchoate and incomplete and never takes effect as a valid contract, and this is especially true where the agreement expressly provides, or its manifest intent is, that it is not binding until signed." (Emphasis added.)

In Coen v. American Surety Company of N. Y., 1941, 8 Cir., 120 F. (2) 393, 397, it is said:

> "Under these authorities the execution of a written contract includes three acts; (1) Signing and (2) unconditional delivery by the promisor and (3) acceptance by the promisee."

In Barber v. Burrows, 1876, 51 C. 405, 407, one of the earliest California cases on the subject, it appeared that the instrument called for execution by four persons. Only three executed it. The Court, in a very brief opinion, laid down what has since been the law of California, by saying:

> "The instrument of September 2, 1872, was never completely executed. It is evident upon an inspection of the writing itself that it was intended to be signed by all the parties to the contract upon which it was indorsed. These parties were the two principals in the contract and the two sureties upon the

bond attached to and forming a part of the contract. It was signed by but three of these persons." (Emphasis added.)

This principle was declared later in Emeric v. Alvarado, 1884, 64 C. 529, in a very elaborate discussion which continues for several pages (see pages 578 et seq.)—a case which the Referee had before him. This case specifically lays down the rule that where an instrument shows on its face that it cannot become effective unless signed by all parties, it is not executed until it is so signed and delivered. This doctrine finds sanction also in Williams v. Kidd, 1915, 170 C. 631, 650, where the Court says:

"Further, it is to be noted that 'execution' is a word of well-defined legal meaning, and is here employed with that meaning. 'Execution' includes effective delivery."

In Sparks v. Mauk, 1915, 170 C. 122, 123, it is said:

"It is the undoubted rule that where the contract contemplates the execution of it by signing either party has the right to insist upon the condition, and mere acts of performance upon the part of one who has not signed will not validate the contract. Tewskbury v. O'Connell, 21 Cal. 60; Spinney v. Downing, 108 Cal. 666 (41 Pac. 797)."

(See also, Jackson & Thomas v. Torrence, 1890, 83 C. 523, 538-539; Hartwell v. Ganahl Lumber Co., 1908, 8 C. A. 733; Winter v. Kitto, 1929, 100 C. A. 302; Anthony Macaroni Co. v. Nunziato, 1935, 5 C. A. (2d)

588.) The latest case on the subject is Wilk v. Vencill, 1946, 76 A. C. A. 806, 808, where very pithily Mr. Justice Doran says:

> "The property described was owned in joint tenancy; the contract was signed by only one of the owners, hence the execution of the instrument was incomplete. (Barber v. Burrows, 51 Cal. 404.) (Emphasis added.)

Of course, when a contract is executed by a party to be charged, there may be circumstances under which, as between him and the party who did not sign, he may be held to it, especially when the other side has performed. But here we are not dealing with such a situation. We are dealing with a requirement which makes an instrument invalid unless it has been recorded within a certain time after "execution". So that in determining what "execution" means, we must look to the contract to see if it is unilateral or bilateral. A glance at the lease contract shows it to be the type of contract which would have conferred no rights on the bankrupt unless signed by the company which owned the machinery. The first sentence of the contract reads:

> "The U. S. Machinery Company, hereinafter referred to as the Lessor, leases to Quartz Crystal Products Co., P. O. Box 4, San Andreas, California, hereinafter referred to as the lessee, the following machinery and equipment, for use in Calaveras County, State of California, to-wit;"

The contract contains the usual conditions, reserves title, recites that "the full agreement between parties is contained herein," and provides for signature by an agent of the "U. S. Machinery Co." and for acceptance by the lessee in this form:

> "Accepted: Quartz Crystal Products Co.
> Raymond I. Biggy
> John W. Buol
> James F. Collins"

It is not disputed that Biggy, Buol and Collins, composing the Quartz Crystal Products Co., signed and acknowledged the instrument before a Notary on November 14, 1944. But they acquired no rights under it until it was also executed by the U. S. Machinery Company, the owner of the property. The record is undisputed that it was signed by them and acknowledged before a Notary on December 12, 1944, and thereafter sent for recordation in the County where the machinery was located and actually recorded, at the request of the U. S. Machinery Company, on December 18, 1944. The Findings of the Referee to the contrary find no support in the record or in the law. The Referee seems to think that it should have taken only two or three days for the U. S. Machinery Company to have one of its officers execute the instrument and record it. He would, therefore, penalize them and deprive them of the benefit of the Section because of delay. I find nothing in the law of California or in Federal law which would warrant us penalizing the owner of property for delay in executing such an instrument. We are not dealing with a section of the type I had under consideration in re Mercury Engineering Co., supra, where I had to determine what is or what is not a "reasonable time." The Code

Section under consideration has saved us the trouble. It has fixed the time,—twenty days "after execution." As "execution" means signing by both parties and delivery, without which the instrument was not effective, we cannot penalize the party whose property it was by insisting that when one party signed it, they should have signed it within two or three days. For that is not what the law says. The law says simply that it "must" be recorded within twenty days after "execution." The record shows that it was not fully executed until December 12, 1944, when the owner of the property, without whose signature the contract conferred no rights, executed the instrument. It was recorded six days after such execution. The fact that, in the meantime, the bankrupt may have had possession of the property under this unexecuted contract does not alter the rights of the lessor.

It follows that the Referee interpreted the law incorrectly and that his order dated January 28, 1947, must be and is, hereby, reversed.

Dated this 6th day of June, 1947.

LEON R. YANKWICH

Judge